IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 33 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHAH SUMANCHANDRA ROSHANLAL

Appearance:

1. Criminal Appeal No. 33 of 1993

Mr M A Bukhari, APP for Petitioner No. 1

MR DK MODI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/12/2001

ORAL JUDGEMENT

This is an appeal under section 378 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code') against the judgment and acquittal order dated 18.9.1992 recorded by the learned Judicial

Magistrate First Class, Kalol, Mehsana District in Criminal Case No.1299/86, under which the learned Magistrate acquitted the present respondent from the offences punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act').

2. The facts leading to the present appeal may be briefly stated as follows:

The original complainant went to the shop of the respondent situated at Kalol in Mehsana District on 27.12.1985 at about 5 p.m. and purchased sample of groundnut oil. After following the procedure in presence of panch witnesses, the sample was sent to the Public Analyst and it was found that the sample did not stand to the standard laid down under the law. It was found that the sample was adulterated and, therefore, a complaint was filed by the Food Inspector against the respondent. The learned Magistrate took cognizance of the offence and issued summons against the respondent. The respondent appeared before the court below in response to the summons. The learned Magistrate supplied copies of the papers to the respondent and thereafter proceeded to record evidence of the original complainant. After recording the evidence, the learned Magistrate found that there was a prima facie case and, therefore, he was pleased to frame charge against the respondents for the aforesaid offence. The respondent pleaded not guilty to the charge and, therefore, he was given an opportunity to further cross-examine the complainant. Additional evidence was recorded and at the close of the trial, the learned Magistrate recorded further statements of the respondent under Section 313 of the Code. Thereafter, the arguments were heard and at the conclusion of the arguments, the Magistrate pronounced the judgment acquitting the respondent from the aforesaid offence. At the first instance it was contended on behalf of the respondent that there was non-compliance of provisions made under sections 17, 18 and 13(2) of the said Act and, therefore, the respondent could not be convicted for the said offence. The learned Magistrate upheld the contention of the defence and found the respondent not guilty for the said charges and therefore, the respondent came to be acquitted of the above charge.

3. Feeling aggrieved by the aforesaid judgment and acquittal order of the learned Magistrate, the State has preferred the present appeal under section 378 of the Code before this Court. It has been mainly contended here in this appeal that the learned Magistrate has not

given cogent and convincing grounds for acquitting the accused. The learned Magistrate has erred in holding that the sample of groundnut oil was not injurious to health. That the learned Magistrate has erred in holding that the respondent was entitled to benefit of doubt. That the learned Magistrate has given undue weight to the minor discrepancy found in the prosecution case and also the typographical errors in writing itself. That even otherwise, the judgment and order of acquittal are illegal and erroneous and deserve to be set aside. The appellant-State has, therefore, prayed that the present appeal be allowed, the judgment and acquittal order be set aside and the respondent-original accused be convicted for the aforesaid offence and he should be dealt with according to law.

4. On receipt of the appeal, leave was granted and appeal was admitted.

Mr D K Modi, learned Advocate appeared in response to the notice issued to the respondent. I have heard Mr M A Bukhari, learned APP and Mr D K Modi, learned Advocate for the parties, who have taken me through the oral and documentary evidence as well as through the findings and reasonings recorded in the judgment by the trial court.

5. It is not much in dispute that the sample of groundnut oil was collected by the original complainant on 27.12.1986 at Kalol in Mehsana District. The records show that the said sample was despatched on 30.12.1985. An attempt was made to argue that the sample was not sent on the next working day in accordance with the provisions made in Rule 17 of the Prevention of Food Adulteration Rules, 1955 (for short, 'the Rules'). The original complainant has not clarified the position but we have, for our satisfaction, referred the calendar of the year 1985 with the assistance of the learned Advocates for the parties and it was noticed that 28 and 29 December, 1985 were closed Saturday and Sunday and 30th December was the first available working day after 27.12.1985. If we go through the relevant provisions made in the rule, it is very clear that the law requires that the sample was required to be sent latest by the next working day.

6. Now, it is very clear that 28th and 29th December, 1985 were holidays in the office of the original complainant and, therefore, the sample could not have been despatched on those two days. Mr Modi, learned Advocate has argued here that post offices would not be closed on those days. Here we find that when the working

days are to be seen, then we have to see the working days in the office of the complainant. Even post offices and railway offices remain open on fourth Saturday. The fact remains that the offices of the State Government, local bodies and Panchayat remain closed on the second and fourth Saturdays. Ultimately, the sample was required to be sent by the office and if there was a closed Saturday on 28.12.1985, then the sample could not have been sent on 28.12.1985, since it was a closed Saturday and the office would not be functioning on that day.

7. Then 29.12.1985 was a Sunday and, therefore, even Central Government Offices would also be closed on Sundays. In that view of the matter, it cannot be said that there was delay on the part of the original complainant in despatching the samples. Under the circumstances, it cannot be said that there was violation of the said provisions referred to hereinabove.

8. Another contention raised on behalf of the respondent is that the law requires that necessary form along with specimen seal is required to be sent in a separate envelope and that the said separate envelope must be sent in a sealed condition. It has been contended that the said envelope was not duly sealed and, therefore, there was again violation of the mandatory provisions of law and, therefore, technical benefits should be made available to the present respondent.

9. On this aspect of the case, there is no serious dispute between the parties. For this purpose, we can go through the provisions made in Rule 18 of the said Rules. Rule 18 of the said rules says that copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst by any suitable means immediately but not later than the succeeding working day.

10. In the present case, it is an admitted position that the memorandum and the specimen impression of the seal have been sent by a separate envelope but at the same time, it is not much in dispute that the said envelope was not duly sealed. The learned APP has tried to argue that the provision for seal on the envelope is not mandatory but directory and no prejudice has been caused to the defence of the respondent and, therefore, an acquittal order cannot be passed for non-compliance of this directory provisions of rule 18 of the said rules. It is difficult to accept the said argument of the learned APP.

11. For this purpose, we can look at a decision of this Court in the case of State of Gujarat v. Shantaben, wife of Dulabhai, reported in AIR 1964 Guj.136. There it has been laid down that the provision made in Rule 18 is mandatory. Another decision in the case of State of Maharashtra v. Rajkaran, reported in 1988 (II)PFA Cases 156. There it has been laid down that the requirements of rules 17 and 18 are mandatory. In Bhojraj v. The State of Madhya Pradesh, reported in 1994 (2) PFA cases 12, it was a case of non-compliance of provisions made in rules 17 and 18 of the said Rules. In that case, admittedly, the envelope containing memorandum and specimen impression of the seal was sent to the Public Analyst under registered post but not in a sealed condition. The High Court of M.P. found that it was a case of non-compliance of rule 18 and, therefore, it was found that the accused were entitled to the benefit of the said non-compliance.

12. It is very clear that the envelope containing memorandum and the specimen seal is required to be sent separately and in sealed condition. This is a statutory safeguard given to the defence with a view to see that none would tamper with the specimen seal or the memorandum sent in the sealed cover. There are number of decisions saying that sending of covers separately is a mandatory provision. On the same line and reasoning, it has to be held that sealing of envelope and sending it separately is a mandatory requirement under the provisions of rule 18 of the said Rules. If the said envelope has not been sealed, then, in that event, there is likelihood of tampering with the memorandum as well as specimen of the seal which would prejudicially affect the defence and interest of the accused persons. In my reading of rule 18, provisions made in rule 18 is mandatory even with respect to sealing of the envelope sent separately. In the present case, the said envelope has not been sent in sealed cover containing memorandum and specimen of seal. Therefore, in my opinion, the original complainant has committed serious illegality in not sending the said envelope in a sealed condition. This has adversely affected the defence of the respondent, and therefore, the respondent would be entitled to benefit of the said flaw exhibited and demonstrated by the original complainant. The respondent can get benefit of this flaw and the appeal can be dismissed on this solitary ground.

13. One more contention raised on behalf of the present respondent is that report of the public Analyst

was not supplied to the respondent in violation of section 13(2) of the Act. Section 13(2) may be reproduced for ready reference:

> "(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated the Local (Healthy) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the same of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory."

It is very clear that soon after the filing of the complaint, copy of the report of the Public Analyst was required to be sent to the respondent for his knowledge and information. Moreover, he would also get an opportunity to apply to the court to get the sample of food kept by the Local Authority analysed by the Central Food Laboratory. It is well settled that report of the Central Food Laboratory would submit the report of the Public Analyst. This would mean that a separate independent authority has been provided for second analysis of the second sample. The defence has valuable right of applying for second test of the second sample. He could legitimately exercise the said right, only if he knew the result of the first test. The result of the first test would be noticed by him only if he had an occasion to go through the first report of the first test. Therefore, with a view to enable the respondent to exercise his right of getting second sample analysed, it was necessary for him to receive a copy of the result of the first test of the first sample. In that view of the matter, in my opinion, the provision made in section 13(2) of the said Act has to be treated to be mandatory. In the present case, we find that the original complainant had not stated anywhere in his evidence that the copy of the result of the chemical analysis of the food sample was supplied to the respondent soon after filing of the complaint. The records show that notice

was sent to the respondent but so far as the analysis report is concerned, there is nothing on record to show that copy of the report of the analysis was supplied to the respondent. Even if we go to the further statement of the respondent recorded under section 313 of the Code, no such question was put to him about the supply of the copy of the report of the chemical analysis of the food sample in question. This would mean that it was an admitted position that copy of the analysis report was not supplied to the respondent. In above view of the matter, it is also clear that there is violation of mandatory provision contained in section 13(2) of the Act. As said above, this provision is mandatory according to my opinion and, therefore, non-compliance of this provision will also go in favour of the respondent and against the appellants.

14. So it is clear that on the aforesaid technicalities, the appeal cannot succeed and the judgment and acquittal order cannot be assailed. In other words, there is no merit in the present appeal and consequently, the appeal must fail and it deserves to be dismissed. In the facts and circumstances, I find that the present appeal is meritless and, therefore, it has to be dismissed and the impugned judgment and acquittal order cannot be said to be illegal and erroneous from any corner.

15. For the foregoing reasons, the present appeal of the State is ordered to be dismissed. The impugned judgment and acquittal order recorded by the trial court are confirmed.

18.12.2001 [D P Buch, J.]
msp